

jAAA

Date of Decision:12.2.1996

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

..T.....T.....T.....J.....T..T.....T.....T.....T.....T.....T.

Mr Y N Oza, Advocate for the petitioner

Mr M R Anand, G.P. with Ms. Harsha Devani, AGP for the respondents.

CORAM ; N N MATHUR, J.
(February 12, 1996)

ORAL JUDGMENT

By way of this Special Civil Application, the petitioner has challenged the order dated 27.10.1995 passed by the Sub-Divisional Magistrate, in the purported exercise of powers under section 37 (i) of the Land Revenue Code.

2. The contention of Mr Y N Oza, learned Advocate for the petitioner is that the impugned order is wholly without jurisdiction as section 37 can be attracted only in case of public roads etc. and lands which are not the property of others belonging to the Government. He submits that the land in question is property of an individual. So far as 11 sq.Meters of land of graveyard is concerned, the dispute has already been settled with the Graveyard Trust. However, the stand of the State Government is that the land is of the State Government though it is managed by the Graveyard Trust.

3. I have heard the learned Advocates for the parties. There is an apparent illegality in the impugned order, i.e. the land belongs to the petitioner which admittedly is not of the Government. In view of this fact, the impugned order dated 27.10.1995 deserves to be set aside.

4. In view of the aforesaid, the Special Civil Application is allowed and the order dated 27.10.1995 is quashed and set aside. However, it is made clear that if the petitioner has raised any construction against law, it is open for the concerned authorities to take appropriate action. It is expected that if any action is taken by the concerned authorities, the same will be taken in accordance with law.

....